

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

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W. S. CARTER

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EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)
Plaintiff,) CIVIL ACTION NO. 506 CV 1154
v.)
BROOKSHIRE GROCERY COMPANY)
Defendant.)
BY 
COMPLAINT
DEMAND FOR JURY TRIAL

COMPLAINT

This is an action under Title I of the Americans with Disabilities Act of 1990 to correct unlawful employment practices on the basis of disability and to provide appropriate relief to Jane Doe¹ (“Doe”), who was subjected to an unlawful medical inquiry and examination and then demoted and constructively discharged because of her disability.

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to Section 107(a) of the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. § 12117(a), which incorporates by reference §§706(f)(1),(3) and 707(a) of Title VII of the Civil Rights Act of 1964 (“Title VII”), 42 U.S.C. §2000e-5(f)(1),(3) and 2000e-6(a), and pursuant to §102 of the Civil Rights Act of 1991, 42 U.S.C. §1981A.

¹ Jane Doe is a pseudonym, which Plaintiff has used in order to avoid publicly identifying the individual on whose claims this lawsuit is based, the individual who filed EEOC Charge No. 310-2005-01872. Plaintiff files, concurrently with its Complaint, a Motion For Protective Order, requesting permission to proceed with this litigation without revealing Jane Doe's real name, and prohibiting all other parties from revealing that name. If that Motion is denied, Plaintiff will file an amended Complaint containing Ms. Doe's real name.

2. The employment policies and practices alleged to be unlawful were committed within the jurisdiction of the United States District Court for the Northern District of Texas.

PARTIES

3. Plaintiff, the Equal Employment Opportunity Commission, is the agency of the United States of America charged with the administration, interpretation and enforcement of Title I of the ADA and is expressly authorized to bring this action by §107(a) of the ADA, 42 U.S.C. § 12117(a), which incorporates by reference §§706(f)(1),(3) and 707(a) of Title VII, 42 U.S.C. §2000e-5(f)(1),(3) and 2000e-6(a). Plaintiff, the Equal Employment Opportunity Commission, also brings this action under 42 U.S.C. § 12112(b)(4).

4. At all relevant times, Defendant, Brookshire Grocery Company (“Brookshire”), has continuously been and is now doing business in the State of Texas and has continuously had at least fifteen employees.

5. At all relevant times, Defendant has continuously been an employer engaged in an industry affecting commerce under § 101(5) of the ADA, 42 U.S.C. § 12111(5), and § 101(7) of the ADA, 42 U.S.C. § 12111(7), which incorporates by reference §§ 701(g) and (h) of Title VII, 42 U.S.C. §§ 2000e-(g) and (h).

6. At all relevant times, Defendant has been a covered entity under §101(2) of the ADA, 42 U.S.C. § 12111(2).

STATEMENT OF CLAIMS

7. More than 30 days prior to the institution of this lawsuit, Doe filed a charge of discrimination with the Commission alleging violations of Title I of the ADA by the Defendant. All conditions precedent to the institution of this lawsuit have been fulfilled.

8. The Defendant has engaged in unlawful employment practices, in violation of

§ 102 of Title I of the ADA, 42 U.S.C. § 12112(a), by demoting and constructively discharging Doe because of her disability, Hepatitis C.

9. The Defendant has engaged in unlawful employment practices, in violation of Sec. 102 of Title I of the ADA, 42 U.S.C. Sec. 12112(d), by subjecting Doe to a prohibited examination and inquiry.

10. The effect of the practices complained of in paragraphs 8 and 9, above, has been to deprive Doe of equal employment opportunities, and has otherwise adversely affected her status as an employee.

11. The unlawful practices complained of in paragraphs 8 and 9, above, were committed intentionally.

12. The unlawful practices complained of in paragraphs 8 and 9, above, were committed with malice or with reckless indifference to the federally protected rights of Doe.

PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

A. Grant a permanent injunction ensuring compliance with the ADA, and enjoining Defendant Brookshire, its officers, successors, assigns, and all persons in active concert or participation with it, from engaging in any employment practice which discriminates on the basis of disability.

B. Order the Defendant to institute and carry out policies, practices and programs that provide equal employment opportunities for qualified individuals with disabilities and which eradicate the effects of the Defendant's past and present unlawful practices.

C. Order the Defendant to make whole Doe by providing appropriate back pay with prejudgment interest, in amounts to be proved at trial, and other affirmative relief necessary to

eradicate the effects of the Defendant's unlawful employment practices, including but not limited to rightful place reinstatement or front pay in lieu thereof.

D. Order the Defendant to make whole Doe by providing compensation for past and future non-pecuniary losses resulting from the unlawful employment practices described in paragraphs 8 and 9, above, including but not limited to emotional pain, suffering, inconvenience, humiliation, mental anguish, and loss of enjoyment of life, in amounts to be determined at trial.

E. Order the Defendant to pay Doe punitive damages for its malicious conduct or reckless indifference described in paragraph 8 and 9, above, in an amount to be determined at trial.

F. Grant such further relief as the Court deems necessary and proper in the public interest.

G. Award the Commission its costs in this action.

JURY TRIAL DEMAND

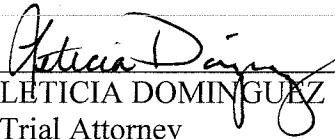
The Commission requests a jury trial on all questions of fact raised by its Complaint.

Respectfully submitted,

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